

PROCEDURES FOR MANDATORY MEDIATION OF HEALTH CARE CLAIMS

(a) Scope of Rule. This rule governs the procedure in the superior court in all claims subject to mandatory mediation under RCW 7.70.100 and .110.

(b) Voluntary Mediation. The parties may establish a procedure for mediation that differs from this rule provided the procedure and the selection of the mediator are agreed to in writing and signed by all parties.

(c) Deadlines. Except as otherwise ordered by the court for good cause shown, mediation under RCW 7.70.100 shall be commenced no later than 30 days before the trial date. Mediation under RCW 7.70.110 shall be commenced no later than 90 days after the selection of the mediator.

(d) Waiver of Mediation. Upon petition of any party that mediation is not appropriate, the court shall order or the mediator may determine that the claim is not appropriate for mediation.

(e) Appointment of Mediator. Subject to the conditions in this section, the court shall designate a mediator from the register described in section (g) upon the request of any party. Except upon stipulation in writing signed by all parties, the court shall not make this designation if the parties have agreed in writing to the selection of a mediator as contemplated by section (b) or have obtained a waiver of mediation under section (d). Except upon stipulation in writing signed by all parties, the court shall designate a mediator no sooner than 180 days before trial, or for mediation requested under RCW 7.70.100, no sooner than 180 days after the good faith request for mediation.

(f) Mediation Procedure. Promptly upon the designation of a mediator, the plaintiff shall arrange a conference call among the mediator and counsel for each party to discuss the procedural aspects of the mediation. Except to the extent the mediator directs otherwise, the following procedures shall apply:

(1) *Copy of Pleadings.* Upon selection of a mediator, the parties shall provide the mediator with copies of the relevant Pleadings.

(2) *Notice of Time and Place.* The mediator shall fix a time and place for the mediation conference, and all subsequent sessions, that is reasonably convenient for the parties and shall give them at least 14 days' written notice of the initial conference. In giving notice the mediator may use a form provided by the court.

(3) *Memoranda.* Each party shall provide the mediator with a confidential memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum shall not exceed 10 pages in length. A copy of the memorandum shall be delivered to the mediator at least seven days before the mediation conference. Any party may deliver a copy of his or her memorandum to any other party. In addition, each party shall deliver to the mediator a confidential statement of its current offer or demand. Any party may deliver a copy of his or her statement to any other party.

(4) *Attendance and Preparation Required.* The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any subsequent sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

(A) All liability issues.

(B) All damage issues.

(C) The position, of his or her client relative to settlement.

(5) *Attendance of Parties and Insurers.* For purposes of this section, "insurer" shall include "self insurer." In addition to counsel, all parties and insurers shall attend the mediation in person. In the event a party defendant has provided his or her insurer with full authority to settle, such party's attendance is optional. The mediator may also, at his or her discretion, but only in exceptional cases, excuse a party or insurer from personally attending the mediation conference. Those excused from personal attendance by the mediator shall be on call by telephone during the conference.

(6) *Failure to Attend.* Willful or negligent failure to attend the mediation conference, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.

(7) *Proceedings Privileged.* All proceedings of the mediation conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, used for impeachment, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement.

(8) *Mediator's Suggestions.* The mediator shall have no obligation to make any written comments or recommendations, but may in his or her discretion provide the parties or their counsel with a confidential written settlement recommendation memorandum, but only if all parties agree. No copy of any such memorandum shall be filed with the clerk or made available, in whole or in part, directly or indirectly, either to the court or to the jury.

(9) *Certification of Mediation.* Not more than 10 days after the mediation concludes or the mediator determines that the claim is not appropriate for mediation, the parties shall certify in writing to the court the manner of mediation, if any, and compliance with the provisions of this rule.

(g) Register of Volunteer Mediators.

(1) *Court to Maintain Register.* The court shall establish and maintain a register of qualified attorneys who have volunteered to serve as mediators. The attorneys so registered shall be selected by the court from lists of qualified attorneys at law who are current members in good standing of the Washington State Bar Association.

(2) *Qualifications.* In order to qualify as a mediator, an attorney shall:

(A) Have been a member of the Washington State Bar Association for at least five years; and

(B) Have experience or expertise related to litigating actions arising from injury occurring as a result of health care; and

(C) Have 6 hours of CLE mediator training and acted as a mediator in at least 10 cases, three of which were medical malpractice; or

(D) Be a retired judge having experience or expertise related to actions arising from injury occurring as a result of health care and satisfy the requirements of (2)(C) herein. 131 Wn.2d 104-266, 1101,

[Adopted effective March 11, 1997; Amended effective September 1, 2007.]